finish all of our witnesses today except for one, Dr. Rebecca Wiester, who is an expert in sexual abuse cases. She is not available today because she has testimony in another court, I believe in state courts. She would be available tomorrow afternoon. She would also be available on Wednesday the 18th or Friday, September 20th.

THE COURT: Tomorrow afternoon.

MR. SAMSON: Very good, Your Honor.

Your Honor, then we would be calling Dr. Henry Dixon.

HENRY H. DIXON, RESPONDENTS' WITNESS, SWORN OR AFFIRMED

THE COURT: I have read Exhibit 7, counsel, Dr. Dixon's report to Mr. Rulli back in '85, which is in evidence.

DIRECT EXAMINATION

BY MR. SAMSON:

Q. Good morning, Dr. Dixon.

A. Good morning.

Q. My name is John Samson. I'm an assistant attorney general.

Doctor, what is your current occupation?

Before you start that, let me ask you to state your name for the record.

A. All right. My name is Henry Hadley Dixon, D-i-x-o-n, Jr.

Q. And what is your current occupation?

A. I'm a physician, licensed to practice medicine in the state of Oregon.

Q. And are you board certified?

EXHIBIT B-3

A. Yes.
Q. In what field are you certified?
A. Psychiatry and neurology.
Q. And that is with the American Board of Psychiatry and Neurology?
A. That is correct.
Q. In your practice, has that included any work in forensic psychiatry?
A. About a quarter of my practice has been so-called forensic psychiatry.
Q. What is forensic psychiatry?
A. It's psychiatry as it applies to the law and legal questions.
Q. How long have you been practicing as a psychiatrist?
A. Well, since 1956.
Q. And have you been recognized with any awards for your work in psychiatry?
A. I am a life fellow of the American Psychiatric Association.
Q. And do you have any publications in the area of psychiatry?
A. I do.
Q. About how many do you have?
A. Twenty, maybe twenty-two or something.
Q. Doctor, have you conducted competency evaluations to determine whether or not a defendant is competent to stand trial or to plead guilty?

A. Yes. Many times.
Q. Can you estimate how many times?
A. The last time I estimated, it was, I think, 2,000.
Q. And have you testified in court before regarding a defendant's mental competency?
A. Many times.
Q. And your testimony, has that just been in the state of Oregon?
A. No.
Q. What other states have you testified in?
A. California, Texas, many times in Washington state.
Q. Doctor, would the fact that a person has a major mental illness, would that necessarily render that person mentally incompetent to stand trial?
A. No.
Q. So the fact that a person may be psychotic or delusional, that in itself would not necessarily render that person incompetent?
A. That is correct.
Q. Do you remember examining Mr. Spencer back in 1985?
A. That's difficult. I've had a deposition and reviews and had it brought to my attention. This took place in 1985, and while I have -- I think I now have some vague memories, but I think they're primarily prompted by the written materials that I submitted at that time.

Q. That would have been the letter that you wrote to Mr. Rulli, the defense attorney?
A. Yes.
Q. And that letter was contemporaneous with your examinations of Mr. Spencer?
A. Approximately.
Q. Approximately a week after your last examination?
A. I could -- that's my recollection. I could refer to the letter, but that's my usual speed.
Q. Doctor, if you would, there is a blue notebook in front of you. Can you turn to the back of that notebook where it indicates Exhibit No. 7. It would be Respondents' A-7.
A. I'm there, yes.
Q. Is that a copy of your letter?
A. It appears to be, yes.
Q. The last time you saw Mr. Spencer was on May 14, 1985, is that correct?
A. I would have to rely on the letter, what it says, but that's my recollection.
Q. And does the letter, on the first page of Exhibit A-7, does it also indicate that the first time you saw Mr. Spencer was on April 25th, 1985?
A. That's what it says, yes.
Q. I would like to ask you a few questions regarding the examinations of Mr. Spencer you had, and if at any time you need

to refresh your recollection by referring to this letter, please let us know.

When you were requested to examine Mr. Spencer, you did not conduct a formal competency evaluation, is that correct?

A. No, not really. I interviewed him primarily with introducing him to the idea that I had been employed to conduct certain evaluations beyond those of Dr. McGovern.

Q. Did you at any time during the first examination attempt to inquire into Mr. Spencer's current mental status?

A. I just have to infer from the tone of my letter, I guess, that I had established that he wanted these procedures and that he was competent to help make that decision.

Q. Did you, during your first meeting, attempt to develop his understanding, whether he understood the charges against him?

A. I think I did, yes. The letter so indicates.

Q. And did you determine whether or not Mr. Spencer had some understanding of the charges?

A. I expressed the idea in my letter that I felt that he had, yes.

Q. And did Mr. Spencer provide you with any information regarding the allegation?

A. It appears that he did from the letter. I don't recall this specifically. I'm just referring to my letter at that time.

Q. Referring to your letter, Exhibit No. 7. On the third full paragraph on the first page, the second to the last sentence, it

states: "This narrative appeared sequential." What does that mean?

A. That means that his recollection, as he expressed, of the events went from A to B to C and appeared logical and coherent and that sort of thing.

Q. It didn't appear to have any gaps?

A. No. Not that I mentioned in the letter.

Q. And it wasn't contradictory to itself?

A. Apparently not.

Q. Did it appear that Mr. Spencer was hallucinating at all?

A. No.

Q. Did it appear that he was incoherent?

A. No.

Q. Did it appear that he was confused?

A. No.

Q. If he had appeared that way, would you have noted it in this report?

A. I would have always noted that, I believe.

Q. If Mr. Spencer had difficulties in discussing the allegations with you at any time, would you have noted that in the report?

A. I believe I did in some way indicate that he gave the sequential -- in that paragraph, for example -- he gave a sequential verbal account. As to whether that was the whole picture, I have no way of telling.

Q. Did you determine whether or not Mr. Spencer had a severe mental disturbance?
A. I did not diagnose a severe mental disturbance.
Q. What would that cover? What type of illness would a severe mental disturbance cover?
A. Well, schizophrenic illness or manic depressive or bipolar illness or what we call an organic brain syndrome where there's clear cognitive and perceptual disturbances. An active depression of a severe nature, that sort of thing.
Q. And you did not detect any of those during your examination?
A. No.
Q. If you believed Mr. Spencer was incompetent or if you had any doubt as to his competency, would you have conducted a hypnosis test?
A. Well, I would have to have a guardian established to make that. This is a procedure that is akin to an anesthetic or a surgical procedure and you have to have some kind of permission.
Q. So the fact that you did not seek out that permission, would that further indicate to you that you believed he was competent at the time?
A. If I had felt that he was incompetent, I would have insisted on that.
Q. If you had observed anything that would cause you some concern as to Mr. Spencer's competency, would you have brought

that to the attention of his attorney?
A. Yes.
Q. Doctor, I would like to ask you about a couple medications. The drug Elavil, are you familiar with that?
A. I have never taken it, but I'm very familiar with it.
Q. What is Elavil?
A. Elavil is one of the older, that is to say early '60s, tricyclic antidepressant medications. It's often used for depression and frequently used for chronic pain, and it's quite sedative so it's often prescribed at nighttime.
Q. If Mr. Spencer was taken Elavil at the time that he entered his guilty plea, would the drug Elavil necessarily render Mr. Spencer incompetent?
A. No.
Q. Can you give an opinion as to whether -- what its effect on his competency would be?
A. I have not experienced -- except in massive overdoses, I have not experienced competency issues relative to tricyclics, including amitriptyline or Elavil.
Q. So unless Mr. Spencer had been given an overdose of the drug, it would not have affected his competency?
A. In my opinion, no.
Q. Are you familiar with the drug Xanax?
A. I am, yes.
Q. And what kind of drug is that?

A. Well, it's classed as a minor tranquilizer. It's benzodiazepine -- b-e-n-z-o-d-i-a-z-u-p-i-n-e -- and it's akin to Valium, which is perhaps better known. It is really listed as what we call an anxiolytic, that is it reduces anxiety.

Q. And would that drug Xanax necessarily render Mr. Spencer incompetent to plead guilty?

A. Not in my opinion.

Q. And if Mr. Spencer -- or let me ask first:

Are you familiar with the drug Sinequan?

A. I am, yes.

Q. And is that also an antidepressant?

A. It is, yes.

Q. If Mr. Spencer had taken Sinequan six weeks before his guilty plea, that is the last time he took Sinequan, would that have affected his competency to plead guilty?

A. I neglected to look up the half-life of Sinequan, but most of the antidepressants in that class have a half-life of about 14 hours, and which is why they are often prescribed twice a day, to include -- to maintain better blood levels. If it were several weeks earlier that he ingested it, it would have almost or completely disappeared from his system by the time his competency was coming in question.

Q. I understand that these drugs have possible side effects that may occur. Is that correct?

A. Yes, indeed.

Q. Would a person who takes Elavil necessarily suffer all the side effects that could possibly occur?
A. It would never be used if all the side effects -- I don't mean to be frivolous -- but I have never experienced a patient responding with all the side effects that are seen with the drug.
Q. So if a person takes Elavil -- would every person who takes Elavil suffer hallucinations?
A. No.
Q. Returning to Exhibit A-7. On the second page, and then over to the third page of your letter before us. You conducted a sodium amytal test of Mr. Spencer?
A. I did, yes.
Q. What is sodium amytal?
A. Sodium amytal is a barbiturate. It's really amobarbital, which can be mixed into a solution and injected intravenously, that is in a vein. The usual dosage that is needed to produce sleep or a twilight condition, that is a sleepy, almost hypnotic-like state -- it's given continuously. From five to seven hundred milligrams is the usual dosage.
Q. How many sodium amytal tests have you performed throughout your career?
A. I really -- I noticed that I think I said 150 earlier. About that amount.
Q. If you had observed anything on Mr. Spencer that would cause

you to have some doubt regarding his competency, would you have conducted a sodium amytal test?

A. I might have.

Q. Would you have first obtained a guardianship?

A. If he was incompetent, yes.

Q. How long would sodium amytal affect a person?

A. Well, sodium amytal given intravenously is a different case than given orally because it metabolizes very rapidly. As a matter of fact, you give it continuously during the amytal interview, trying to maintain the state that I described earlier, a sleepy, semi-aware, anti-twilight, hypnotic state. And it's metabolizing out all the time so you have to add more. Most people come into an interview without having had breakfast, and within 30 to 40 minutes after the interview they will be eating breakfast and able to ambulate. So it's very rapid in its metabolism.

Q. And clarify, was the sodium amytal that was given to Mr. Spencer, was that through an injection or was that orally?

A. It was through an injection.

Q. And you stated that a person would be ambulatory in how many hours, would you estimate?

A. How many hours? Thirty to forty minutes.

Q. What does ambulatory mean?

A. Can stand and walk around alone without assistance.

Q. Would sodium amytal affect a person's competency two days

after it had been administered?
A. I can't imagine such a circumstance.
Q. A person wouldn't have to be led around on a string for four days after receiving sodium amytal?
A. Not due to the drug, unless there was some -- if, for example, they had severe kidney disease and they don't metabolize the drug out, they could stay drunk on it, you know, intoxicated. Ordinarily with functioning kidneys, and so forth, 30 to 40 minutes they can ambulate and go where they wish.
Q. Did you see Mr. Spencer after you had administered the sodium amytal test and performed the test?
A. It is and has been my custom to remain with them until they're fully conscious, or at least ambulating with the help of a nurse or some aid.
Q. If you could, look on Exhibit A-7, on the third page, the last full paragraph.
You state, "He," and I assume that means Mr. Spencer, is that correct? In the second sentence of the last full paragraph. "He expressed curiosity."
A. The second sentence?
Q. Of the last full paragraph on page 3.
A. Okay.
Q. "He expressed curiosity as to the results of these studies." Would "he" refer to Mr. Spencer?
A. Yes.

Q. And the expression of curiosity, that was after the sodium amytal test and the hypnosis test that you had previously referred to in this letter?

A. I'm not sure about what the question is.

Q. Okay. Doctor, this letter is sequential. It discusses your first examination through to your fourth examination, is that correct?

A. I probably admit that.

Q. And then the last paragraph discusses Mr. Spencer expressing curiosity.

A. Yes.

Q. Would his expression of curiosity as to the results of these studies have occurred after you had completed the sodium amytal test?

A. Yes.

Q. And that same sentence states that Mr. Spencer "verbalized disappointment that no further understanding seemed to be cast upon the validity of the charges brought against him." Would that verbalization of disappointment also have occurred after these tests?

A. That's my best recollection, yes.

Q. If during the guilty plea hearing on May 16th, 1985, the judge had asked Mr. Spencer if he had two years of college education, and Mr. Spencer corrected the judge and said, "I have four years of college education," would that indicate that Mr.

Spencer was competent at that time?
A. I don't think it would bear very much on his competency.
Q. Would it indicate that Mr. Spencer was able to understand the judge's question, if Mr. Spencer corrected the judge as to the number of years Mr. Spencer had been in college?
A. It would be one of the elements, in my opinion, of reflecting competency.
Q. And if the judge had commented that he was not ready to sentence Mr. Spencer because he had to decide whether to impose a sentence of 20 years or a sentence of life imprisonment, and the judge made a comment, "There's a lot of difference between 20 years and life," at which time Mr. Spencer responded, "Yes, sir, there is," would that indicate that Mr. Spencer had some understanding of the consequences that he was facing?
A. As you relate that question, it appears that the answer is responsive, which is one of the elements of competency.
MR. SAMSON: Thank you very much, Doctor. I have nothing further.

CROSS-EXAMINATION

BY MR. CAMIEL:
Q. Good morning, Dr. Dixon.
A. Good morning.
Q. Doctor, I believe you indicated at the beginning of your testimony that your actual independent recollection of your contact with Mr. Spencer was vague.

DIRECT EXAMINATION

BY MR. SAMSON:

Q. Good afternoon, Judge Rulli. Could you please state your full name for the record.

A. James E. Rulli.

Q. What is your current occupation?

A. I am currently a superior court judge in Clark County, Washington.

Q. How long have you been a judge?

A. Since July 19th.

Q. Congratulations.

A. Thank you.

Q. Judge Rulli -- if I may address you by that --

A. That's fine.

Q. -- title. What did you do before you became a judge?

A. I was in private practice for approximately 20 years.

Q. And what type of practice?

A. My practice was criminal law, family law, personal injury work.

Q. And in 1985, what percentage of your practice would have been criminal law?

A. More than 50 percent of my practice was criminal law in 1985.

Q. In 1985, were you one of the few attorneys qualified to handle class A felonies in Clark County?

EXHIBIT B-4

A. Yes, I was.
Q. And in 1985, were you familiar with the legal standard for mental competency to stand trial?
A. Yes, I was.
Q. Approximately how many months did you have contact with Mr. Spencer in 1985?
A. Approximately six months, I believe.
Q. During your representation, you had had personal contact with him during over that six months?
A. Yes, I did.
Q. Would you have discussed during that time the charges against Mr. Spencer?
A. Yes, I would have.
Q. And would you have discussed the possible consequences of a conviction on those charges?
A. Yes, I would have.
Q. And would you have discussed possible defenses with Mr. Spencer?
A. Yes, I would have.
Q. Do you recall if at any time during your representation of Mr. Spencer you had any reason to question his competency to stand trial?
A. No, I did not.
Q. If you had such a question, would you have raised that to the court?

A. Yes.
Q. I would like to ask you briefly about the victims in this case. Do you remember interviewing the children back in 1985?
A. No, I do not at this time.
Q. During your deposition a couple months ago, were you shown some documents?
A. Yes.
Q. And did those documents refresh your recollection regarding whether or not you had interviewed the children?
A. I don't recall, Mr. Samson.
MR. SAMSON: Your Honor, if I may approach.
Q. (By Mr. Samson) Judge Rulli, I'm showing you a copy of your deposition. If you could turn to page 27, please.
I take it you don't remember making any determinations then whether you had considered the credibility of the victims. You don't recall that at this point?
A. That's correct, and that's reflected in my deposition at line 14.
"Question: Do you remember talking to the victims?
"Answer: No, I don't."
Q. On line 19, on that same page, did you also then say that based upon interviews with the victims at that time, they appeared credible?
A. Yes, I did.
Q. Do you remember if during the guilty plea hearing you had

indicated to the judge whether or not you believed the children were credible?

A. I don't have any recollection of that, Mr. Samson. I haven't reviewed the transcript of the guilty plea hearing.

Q. Whose decision would it have been for Mr. Spencer to plead guilty?

A. It would have been his decision.

Q. And before he entered a guilty plea, would you have discussed that decision with him?

A. Yes, I would have.

Q. Would you have attempted to force him in any way to plead guilty?

A. No, I would not.

Q. If he had desired to go to trial, would you have in fact gone to trial?

A. Yes, I would have.

MR. SAMSON: That is all I have, Your Honor. Thank you very much.

CROSS-EXAMINATION

BY MR. CAMIEL:

Q. Good afternoon, Judge Rulli.

A. Hello.

Q. I'm Peter Camiel, and I'm representing Mr. Spencer.

Do you have an independent recollection of your various meetings with Mr. Spencer during the time period that you were

an admission that the allegations might be true?
A. If the defendant made an admission, would I consider that factor?
Q. Yes.
A. Yes.
Q. And would that factor have carried some weight if the defendant told police that the allegations may be true?
A. Yes.

MR. SAMSON: That is all I have. Thank you.

THE COURT: Anything further, Mr. Camiel?

MR. CAMIEL: No, Your Honor.

THE COURT: Just a second, Judge Rulli. Let me take a look at a couple of things here and see if I have any other questions.

E X A M I N A T I O N

BY THE COURT:

Q. Judge Rulli, I have a couple of questions, and I don't know if you can reconstruct some of what went on back there or not.

As the trial date neared, was Mr. Spencer pretty upset about his situation and this whole thing when you would talk to him?
A. Visibly upset, Your Honor?
Q. Yes.
A. I couldn't tell you at this point in time how he felt.
Q. Do you recall him crying, for example, or --
A. I don't recall that.

Q. He was obviously in a tough situation.
A. Yes, he was.
Q. And is your recollection that he acted appropriately, as far as you could see, considering the situation he was in? I mean what you would expect of a criminal defendant in that situation with his background.
A. Yes, I thought so.
Q. If you had had this report, Exhibit 1, regarding Kathryn Spencer, obviously it would have led to more study on your part, more investigation. Are you able to say now what use you would have put that information to in terms of trial or advice regarding plea?
A. Well, I think that that information, Your Honor, would have been one factor we would have considered in the totality of all the charges. We had multiple victims with several counts of different allegations that were raised, so it was one factor in the total picture. As far as having that evidence at trial, we would have used it to rebut the testimony of Kathryn that these events happened.
Q. Do you recall what you expected her testimony would be regarding penetration, vaginal penetration?
A. No, I do not recall.
Q. We have three victims here, multiple counts. If this information had led you to conclude that you might successfully attack Kathryn's testimony at trial because of inconsistent

evidence and her statement, are you able to tell me whether you think that would have had any effect on the cases of the other children, where the other children were victims?

A. Well, if I would have been able to successfully attack Kathryn's testimony, I would have only gotten to the source of the inconsistency, and if that led to someone else coaching the children to testify in this manner, then, of course, I would have investigated that in regards to the other two victims.

Q. At the time you got up to this plea, was this sort of an "all or nothing" thing as far as the government or the prosecution was concerned?

A. Yes, it was, Your Honor.

Q. You couldn't say, well, I'm -- well, okay.

A. Some of the counts were dismissed at that time, but because of the sentencing range on, I believe, Counts I and II with the 20 to life, it was an all or nothing.

Q. Were you satisfied when the plea was entered that you had gotten all out of the prosecution that you were going to get out of him in terms of a plea bargain?

A. Yes, sir. Mr. Peters and I had tried other cases in the past, Your Honor, so we were -- we weren't friends at the time, let's put it that way.

Q. Do you think that was part of his --

A. Part of his responsibility and part was mine. We were both advocates. Mr. Peters was a good attorney for the state, and I

thought I was for the clients I represented, also.

THE COURT: Okay. I guess I have no other questions. Do you have further questions of Mr. Rulli?

MR. SAMSON: I have no questions, Your Honor.

THE COURT: Mr. Camiel?

MR. CAMIEL: I have no other questions.

THE COURT: Okay. Have you got opposition down there?

THE WITNESS: No, sir. All seven positions are unopposed.

THE COURT: Is that right? I was not aware of that. I was aware of your appointment through the judicial clipping services that we do get from the state, or at least I get them -- maybe because I'm a retired state judge, I don't know. So congratulations. I hope you have as happy a time being a judge as I have over the last coming on 30 years now.

THE WITNESS: Well, I hope so. Thank you.

THE COURT: Okay.

(Witness excused.)

MR. SAMSON: Your Honor, we have no further witnesses for today. We have one remaining witness we would call tomorrow, and that's Dr. Wiester.

MR. CAMIEL: Your Honor, I wanted to offer as Petitioner's Exhibit No. 32 the omnibus application that we --

THE COURT: The original, or copy of the original?

MR. CAMIEL: A copy of the original. I don't think

AFTERNOON SESSION

(Defendant present.)

THE COURT: Counsel, I have to recess at 1:30 for a, hopefully, very brief conference call, but we will proceed with the time we have here.

Since we met yesterday, I have read the deposition of Dr. Logan, so I think now I have read all of the depositions offered and the exhibits that have been admitted.

And this is your next witness, I take it?

MR. SAMSON: Yes, Your Honor. The respondent will call Dr. Rebecca Wiester.

REBECCA T. WIESTER, RESPONDENTS' WITNESS, SWORN OR AFFIRMED

THE COURT: Thank you. Please be seated here.

DIRECT EXAMINATION

BY MR. SAMSON:

Q. Good afternoon. Could you please state your full name for the record.

A. My name is Rebecca Tritt Wiester.

Q. And you are a medical doctor?

A. Yes.

THE COURT: Excuse me. Spell your last name for us, please.

THE WITNESS: W-i-e-s-t-e-r.

THE COURT: W-i --

THE WITNESS: e-s --

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THE COURT: -- e-s-t-e-r.

THE WITNESS: Yes.

THE COURT: Wiester.

THE WITNESS: Wiester.

(Reporter asks witness to spell her middle name.)

THE WITNESS: T-r-i-t-t.

THE COURT: Pardon?

THE WITNESS: Tritt. My middle name.

THE COURT: Oh.

Q. (By Mr. Samson) Dr. Wiester, are you licensed to practice in the State of Washington?

A. Yes, I am.

Q. Do you have a specialty as a physician?

A. I'm a pediatrician, and also a consulting physician for the King County Sexual Assault Research Center.

Q. So would you say that you had a specialty as a pediatrician?

A. Yes.

Q. And what would that be?

A. Pediatrics, and then with sexual assault, child sexual assault.

Q. Would you briefly tell us or summarize your education for us.

A. I graduated from the University of Cincinnati in -- let's see -- 1975, and went to the University of Cincinnati Medical School, from which I graduated in 1979, and then did a year of

family practice internship at the University of Cincinnati and then a full three-year pediatric residency at Cincinnati Children's Hospital, finishing in 1980. And then have been -- I was in private practice in Cincinnati, and then after moving here approximately 11 years ago, have worked for the Seattle-King County Department of Public Health as a staff pediatrician and chief of physician services and have been the consulting physician for the King County Sexual Assault Research Center as well as for Harborview Sexual Assault Center since for the past, oh, seven years.

Q. And where do you currently work?

A. I currently work for the Seattle-King County Department of Public Health, and also occasionally at Harborview Sexual Assault Center.

Q. Do you work at the Federal Way Sexual Assault Center?

A. Yes, I do.

Q. In that employment, what type of examinations do you perform?

A. As a physician for the Health Department, I do basic pediatrics, and then I also run the medical examinations for the Sexual Assault Center.

Q. Do you examine alleged victims of sexual abuse?

A. Yes, I do.

Q. And that would include children and adults, or just children?

A. Children up until about 18.

Q. And do you have any specialized training that you have received in the area of examining children who are alleged victims of sexual abuse?

A. Yes, I do. In 1987, the first training that I attended was through the Harborview Sexual Assault Center, and it was didactic training as well as in-clinic training, some time spent seeing patients and learning to use the colposcope. I then took the Harborview sexual assault training for physicians in 1989, and which is also another two or three day training with in-clinic training as well. And then shortly thereafter, I was asked to be the consulting physician and run and set up the Federal Way Clinic for the King County Sexual Assault Research Center, which I have managed and run since that time. I have taken numerous continuing medical education courses as well as run and partaken of the Northwest Colposcopy conferences which happen several times a year since that time. I have been the consulting physician as well as attending physician at the Harborview Sexual Assault Center on occasion, and certainly have read multiple journal articles and done teaching, as well, in the Harborview Sexual Assault Center sexual training since 1989. I have been a part of that teaching program.

Q. So you train other physicians on how to conduct sexual assault examinations?

A. Right.

Q. Can you approximate how many examinations of children who are alleged victims of sexual assault you have done during the course of your career?

A. Well, over the course of my career, there are many kids I've seen in basic pediatric clinic or at Harborview, but the main part of the kids that I see are the children scheduled into my clinic in Federal Way, and that's, I would say, approximately 150 children a year, and so it ends up being probably over a thousand children just in that clinic.

Q. Just in the Federal Way clinic?

A. Right. Right.

Q. Have you testified in court before?

A. Yes, I have.

Q. Approximately how many times?

A. I don't know exactly how many times. For my clinic, it seems to be about three or four times a year, maybe.

Q. And is there a specific type of case that you testify in?

A. They're all cases related to the allegations of child sexual abuse.

Q. There's criminal cases, though?

A. Right. They are criminal cases and a couple of domestic -- or civil cases.

Q. You testify for the prosecution or for the defense?

A. I've only been asked by the prosecution.

Q. You haven't been asked by the defense?

A. No.
Q. If you were asked, would you testify for the defense?
A. Yes.
Q. Explain briefly the difference between the physician who is a pediatric and one who is a family practitioner.
A. Well, a physician who is a family practitioner has done his or her residency in family practice. Family practice encompasses a large area of medical care, including obstetrics and adult care and elderly care, as well as pediatric care. So the amount of time spent doing pediatric examinations is significantly smaller than the time spent doing pediatric residency where the entire -- all the time is spent doing pediatric examinations and evaluations.
Q. I would like to ask you what you have reviewed in preparation for your opinion today. Have you reviewed various police reports, utility reports?
MR. MAIR: Excuse me, Your Honor. Is counsel done with his qualifications as an expert witness?
MR. SAMSON: Yes, Your Honor. Unless the court needs me to further develop this matter, I believe I am.
MR. MAIR: And is he proffering her as an expert in this specific area?
MR. SAMSON: Yes, Your Honor, I am.
MR. MAIR: Could he share with us that specific area.
MR. SAMSON: Very good, Your Honor.

Your Honor, I will be offering Dr. Wiester as an expert to give an opinion in the area of the examination of children who are alleged victims of sexual abuse, both molestation and penetration by penile penetration or by foreign objects, as well as any alleged sexual contact between the mouth and genitals. I will be offering Dr. Wiester to give opinions on both examinations in general and the specific examinations that were conducted in this case.

MR. MAIR: May I briefly voir dire on qualifications?

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. MAIR:

Q. Doctor, I believe in response to counsel's question about specialities, you said you had a specialty in pediatrics and then sexual assault?

A. Right. Now, sexual assault is not a board certified specialty like pediatrics is.

Q. Right. So you're board certified in pediatrics?

A. Right.

Q. And there is no such specialty in medicine as of today?

A. There is no nationally recognized certification process at this time for people who do these kinds of exams, you're right.

Q. Okay.

Secondly, you mentioned articles. Have you published articles in this field?

A. No. I'm a clinician. I don't do research and publish articles.

Q. Have you participated in any studies that resulted in articles?

A. No, I haven't.

MR. MAIR: Thank you. I have nothing further.

DIRECT EXAMINATION (Continuing)

BY MR. SAMSON:

Q. Dr. Wiester, in the cases that you have testified in in the past, have you testified as an expert?

A. Yes.

Q. You've been found to be a qualified expert by the court?

A. Yes.

Q. Doctor, I would like to ask you now about the various materials you have reviewed in preparation for today.

THE COURT: I'm not sure that's correct. Judges typically don't find, unless they do it orally in findings and conclusions of a case, find the people to be experts. They find that they are qualified to render opinions. That's a nicety that is lost on most judges and lawyers, but I'm not going to find at this point that she's an expert, only that she's qualified to render an opinion. I might find her qualified and at the end not agree with anything she says and say she wasn't so expert after all.

Not likely, Doctor.

MR. SAMSON: Very good, Your Honor.

Q. (By Mr. Samson) Doctor, if I can ask you about what you have reviewed. Have you reviewed various police reports and utility reports?

A. Yes, I have.

Q. Have you reviewed a summary of the charges that were alleged in this case?

A. Yes, I have.

Q. Have you reviewed the medical reports of Kathryn Spencer and Matt Hansen?

A. Yes, I have.

Q. If you can open that blue notebook that is in front of you, and turn to the very first exhibit, Petitioner's Exhibit No. 1.

A. Okay.

Q. Is that the medical report of Kathryn Spencer that you reviewed?

A. Yes, it is.

Q. And could you look at what's been marked as Petitioner's Exhibit 2.

A. Yes.

Q. I'm sorry, is that the medical report of Matt Hansen that you reviewed?

A. This is a part of it, yes.

Q. You reviewed additional reports regarding Matt Hansen?

A. Yes. There was a full medical record from Kaiser Permanente

Medical Care Program that was much more extensive. It basically, aside from this part, was basic common pediatric care visits.

Q. That ranged over a period of years?

A. Yes.

Q. Doctor, did you review affidavits from a Dr. Magee and Dr. Galaviz?

A. Yes, I did.

Q. I would like, if we may, for you to describe the anatomy of a female genitalia. And I notice that you have drawn a diagram, and I would like to go over that diagram with you --

A. Okay.

Q. -- if I may.

Basically, can you tell us generally what the female genitalia is?

A. Well, the female genitalia generally refers to any part of the female body that has reproductive capacity, external and internal genitalia included. What I'm going to -- what I will demonstrate there is just the evaluation of the anal genitalia area, which includes the anus as well.

Q. Would a pelvic examination, would that normally cover the anus?

A. It depends. A pelvic examination, by definition that is commonly used, refers to usually an examination of a post-pubertal child or adult female because a pelvic examination

implies that there was examination of the anatomy or the organs that are within the pelvis. So an external genital examination is usually what we do in children who are prepubertal. In other words, kids who aren't teenagers yet, we don't put things into their vagina to look at or, you know, put the finger into the vagina to examine the ovaries and uterus or the bladder, which is what a pelvic examination by common terminology is. A genital, inner genital examination is generally what we call an examination of the private parts of the child.

Q. So you would not anticipate that a pelvic examination of a prepubertal female would include the anus?

A. Not necessarily. That's usually called, in pediatric practice, an anal examination.

Q. Doctor, with the court's permission I would like you to approach the diagram that you have just drawn.

THE COURT: Sure.

Let's move right along with this. This is not like new, you know. I've had classes in anatomy, and so forth, and so let's move quickly through what you need to do.

I want to point out to you that the time you use with this witness is coming out of your argument at the other end of the case, so let's move right along.

MR. SAMSON: Very good, Your Honor.

Q. (By Mr. Samson) Doctor, perhaps I can just have you point out a couple structures very quickly.

A. Okay.
Q. If you could, point out where the hymen would be.
A. Okay.
Well, just quickly, what I'm going -- the reason that I put these two things here is because of the positions that we use for evaluating the genitals of children in females. This (indicating) is called the standard; this is (indicating) called the supine frog leg position because they're lying on their back with their feet out to the side like this (indicating) and the labia, or the lips, which is what you see when you change a diaper, are pulled to the side so you can see the internal structures which are not visible unless do you that.
Q. So the labia is external?
A. Yes, these are external genital structures. The labia majora.
Q. What would be the next internal -- or the next structure in line?
A. The next structure in line going into the body would be the labia minora, the clitoris, and the clitoral hood. And the posterior, it's called the posterior fourchette.
Q. What would be the next structure?
A. The next structure in line then is the clitoris, and the beginning of what's called the posterior fascia, which is like a bulb going back towards the hymen.
Q. And -- I'm sorry?

A. Then the next structure going back into that is the plane that holds the hymenal tissue, the hymenal opening or orifice and the urethra, which is underneath the bladder.

Q. Thank you, Doctor, you may have a seat again.

Doctor, could you clarify, is the hymen a sheath that covers --

A. No.

Q. -- the inside of the vagina?

A. No. Normally what the hymen is, is a membrane with an opening in it. Normally children are born with an opening in the hymen, and it covers a part of the opening of the vagina.

Q. And are all hymens the same?

A. No, they are not.

Q. How could they be different?

A. In prepubertal children, children before reaching the age of adolescence, there are about three or four different kinds of hymen tissue, or hymen shapes. One is what I have shown there, which is called a posterior rim or crescentic, it's like a crescent hymen where most of the tissue is posteriorly. Another kind is what is called a circumferential where the opening is circular and there's more tissue towards the front of the body. Another kind is redundant, which mainly means extra tissue is there and it's sort of folded. There's still an opening in the middle, but it looks more like a folded-up sleeve. And then there are others which are less common which are called

fibrillated, where they are redundant but it has fingers of tissue that extend out.

Q. Could you tell us what a colposcope is?

A. A colposcope is basically an operating microscope that is on a stand, that stands usually about four feet tall. It can be moved up and down and back and forth. It has a fiberoptic light source, and in our case, we use a photocolposcope which has a 35 millimeter connected to the microscope to photograph the images seen through the microscope.

Q. What is your understanding of the legal definition of penetration for a rape case in the State of Washington?

A. My understanding of legal penetration is that it is penetration of a child's genitalia, either labia majora or anus, however slight.

Q. Does the hymen itself need to be penetrated?

A. No, it doesn't.

Q. Briefly tell us, if you could, what you normally do when you conduct an examination of a child who's alleged to be a victim of sexual abuse.

A. What we normally -- do you want it from the beginning of when we hear of the child or from the time we're in the examining room?

Q. Briefly, what happens when you first hear from the child?

A. In our situation, when we first hear from a child, the child comes to the sexual assault resource center. That's where all

the calls from child protective services, law enforcement, parents, everyone else comes to there. The legal advocate then does triage of family, figuring out whether or not the child needs a medical examination, needs a check by the regular physician, or there's other referrals to be made. The children that we have decided need a medical evaluation for possible sexual abuse are scheduled into my clinic. When they come to my clinic on a certain day, they come with a parent, and the legal advocate is there. At the point when they come, they've already received a lot of information about the examination.

Q. What --

A. At that point --

Q. I'm sorry.

A. -- I interview the parent alone, the child alone, and then we do the examination in the exam room with usually a parent present, myself, and my nurse.

Q. How long does the actual examination take?

A. The physical examination?

Q. Yes.

A. It takes usually 30 minutes. It can take up to 45 minutes. That's an average for us.

Q. You have two positions that you noted, the supine frog leg and the prone knee-chest position. Are there any other positions you use?

A. There's another position that we use routinely. It's the

knee-chest position where the child is still on her back but the knees are put together and they are held to her chest, and that's for an examination of the anus.

Q. Is that the recommended method for performing an anal exam?

A. Yes.

Q. And are these other two methods the recommended method for a vaginal exam?

A. Yes.

Q. Why do you use those positions?

A. The purpose of the first position is to evaluate the external genitalia, including the labia majora, everything you can see on the outside. It is also extremely important for looking at the posterior fossa, which is that bulb part that goes back in towards the hymen. It's a very good way to see the posterior fourchette, which is the connection of the two labia majora. It also gives you visual examination of the clitoris and clitoral hood and labia minora. It also gives you one way of looking at the hymen, which can have very, either folding tissue or tissue that falls in different positions. It's actually comfortable for children, which is another reason that we use it, and it allows them to see you while you are examining them.

The reason for doing -- did you want to know about the knee-chest position?

Q. If you could, briefly.

A. Well, the reason for that position is that you can see basically the hymen tissue much more adequately. The effective grabbing of the abdominal wall, pulling down towards the table, it pulls the tissue down and stretches out the posterior hymen so you can see that much more adequately. That is a position which is much more difficult for children to tense muscles. They don't tend to tense their muscles as much. Where even in the position of supine frog-leg, on their back, if they are uncomfortable or have to go to the bathroom, or whatever, don't want to be there, tensing those muscles, you very rarely can see the hymenal opening. In this position they tend to be more relaxed and it stretches the tissue out so you can better evaluate the hymenal tissue.

Q. Doctor, you mentioned that the child can tense so you can't necessarily see the hymen. Let's assume the child was in the mother's lap and cowering in the mother's lap during the examination. Would that affect the ability to see the hymen?

A. Significantly.

Q. Why would that be?

A. Well, for several reasons. First of all, a child in the mother's lap -- and we examine some children in their mother's lap but they are sitting on the table and we have a specific way of positioning them so that we get the same effect. If you do not do that -- and it takes some work in training of the parents -- you can't expose, you can't get the legs open and relaxed so

that you can move the lips or the labia out enough because you don't just have to push them this way (indicating), you actually need to pull a little bit and down so that you expose all the tissue. If you are unable to do that, just positionwise, you very often won't see any hymenal opening at all because of the closeness of the tissue.

Another reason is that a child who is cowering or screaming or unhappy and not willing to be there will tense up and will tighten their muscles. I mean, some kids will push their knees together. Other kids will just tense up even if their knees are apart. That clenching of the pelvic muscles can close all of that anatomy. You can't get a child to relax. So even though the hymen itself doesn't have muscles in it, all the muscles around it can close.

Q. Doctor, do you use just one of these positions or do you use them in combination?

A. No. It is standard and routine to use them in combination, and it is rare that we do not use all of them.

Q. What would you do if the child that you were about to examine was screaming?

A. I don't examine screaming children. If there is a life threatening emergency, significant vaginal bleeding and the source needs to be evaluated on an emergency basis, those children can be sedated or anesthestized for evaluation. Other than that I do not examine screaming children.

Q. After you have done your examination, what type of information do you rely on when you form your opinion?

A. After my examination, I rely on the information taken from the child, sometimes the information taken from the parents or the other referring people that brought the child to me, and to the information in review of the colposcopic slides, as well as any laboratory data that has been accumulated.

Q. If you could refer to Exhibit No. 1, in the very front. On page number 2. It references the term "hymen intact."

In your opinion, if this had been, in quotes, an extremely rushed exam lasting maybe 15 to 30 minutes and the doctor performing the exam is a novice, not very experienced in the exam, and the child is in the mother's lap during the exam and the child is screaming and cowering, would the physician likely be able to see the hymen?

A. It's unlikely.

Q. Could the physician have mistaken something else for the hymen?

A. I have seen that happen, yes.

Q. Let's assume that the physician actually saw the hymen and was looking at the hymen and not something else, and all these conditions were present: The child was cowering and screaming on the mother's lap and it was a rushed exam. Could the physician necessarily see everything, or is it possible that the physician might have missed something?

A. I think it's very -- I think it's very possible that something could be missed.

THE COURT: Excuse me, counsel. I've got to get this conference call. I hope it will be five minutes or less.

(Court recessed for a conference call.)

THE COURT: I'm sorry, it took a little longer than I thought, as discussions with lawyers often take longer than you think they are going to.

MR. SAMSON: Thank you, Your Honor.

Q. (By Mr. Samson) Doctor, the information you had just been talking about regarding the type of examination you performed and whether an examination may hinder the ability to see the hymen, is that based just on your own experience?

A. No. That's -- it's based on well-respected studies of multiple clinicians who are responsible for research and review of the literature and the state of the art at this point.

Q. Doctor, can you have slight penetration, penetration of the labia majora, without having any physical injury?

A. Yes.

Q. Would that include having no lacerations?

A. Yes.

Q. No swelling?

A. Yes.

Q. Is it possible to have full penetration, actually through the hymen, without causing damage to the hymen?

A. It is possible. It depends on the kind of hymen, and also the time of evaluation since the penetration.
Q. Have you had any cases where you have either heard about that occurring or actually seen that in an examination?
A. I've had many cases I have heard about, and I have seen it myself, as well.
Q. If a child describes that the penetration caused pain, discomfort, and bleeding, could you still expect to see a normal hymen?
A. You can, yes.
Q. Why would that be?
A. Well, first of all, pain experienced by a child does not correlate necessarily at all with hymenal penetration. Pain described by children, which is commonly described in child sexual assault, does not correlate in studies or clinically with lacerations to the hymen on injuries to the hymen. Very often the pain that is complained about we think may be due to pressure around the genitalia. You can tell by doing examinations on children that if you touch the hymenal tissue with a Q-tip that's covered with cotton ever so slightly, they will tell you, "You poked me. That hurts," and your exam is over. So that tissue is very sensitive. Any pressure to it is painful. Any pressure to areas in the genitals, any other rubbing or touching can be painful.
The issue of discomfort or crying, children who are examined

and are not even touched but are sitting on their mother's lap very often will complain of discomfort and cry, which is not related to any touching at all.

And the issue of blood, it has been shown in a recent article that children who have history of blood appearing at the time of the molestation have an increased incidence of having findings. But there is also, you know, another large group of children who have no findings. So blood is positively associated with that. But that's all.

Q. You just mentioned that in instances a person would take a Q-tip, do a swab and touch the hymen, and the child talks about having pain.

A. Yes.

Q. Would that necessarily be some type of visible injury to the hymen?

A. No.

Q. What about anal penetration where the child describes pain, would you expect to see physical injury there?

A. In actual -- in the research that's been done, and years of clinical research, and also in my experience, anal findings are extremely rare, even when you know there's a history of anal penetrative trauma, even repeated anal penetrative trauma. It's extremely rare in all the studies that have been done. The reason for that is the anus is a part of the body that is meant for distensibility. It has tissue that is much more forgiving,

and the healing of the anus is remarkable. So you almost never see anal scarring or abnormalities of the anus. And that's proven in all the studies, as well.

Q. What if the child was saying that it hurt so bad it made them cry, would that cause you to believe that there would be more likelihood of injury?

A. No.

Q. What about multiple penetration by more than one person, would that increase the likelihood of injury?

A. It could. You would think that with the increased numbers of times that there would be an increased incidence of injury. What we see actually, though, in studies and clinically is that you almost never see anal scarring or anal findings. Occasionally they are seen acutely as an anus that cannot contract as sitting open. Occasionally you can see it as swelling, certainly redness and swelling, very acutely, which resolves very quickly. And rarely as anal scar.

Q. How about a vaginal penetration, multiple penetration by men?

A. Well, if you are referring to true actual penile penetration of the vagina through the hymen, that we're saying, we're talking about, once again it depends upon the kind of hymen, it depends upon the kind of damage that is done. It depends on the time since those events happened that the child is seen, and it depends upon certainly the degree of penetration.

Q. What if you don't know the actual degree of penetration, all you know is there is an allegation that multiple men have penetrated the vagina, or there was vaginal penetration, even if slight penetration.

A. Okay. Well, what -- there can be a range of findings, anywhere -- and this is, once again, this is affected by many things. If you are assuming you have done an adequate examination and you are really seeing what you are seeing, the range of findings can be anywhere from normal to diagnostic or abnormal. And that is because of the fact that if you're putting something through a hymen and you have a hymen that is distensible, in other words it is stretchable or elastic, which has been shown in studies and we have seen operating room evaluations of hymens that is quite remarkable of prepubertal children, certainly you can have initial stretching out and probably -- and then those can return to normal. And there can be swelling, which will also return to normal. There can be lacerations, certainly, some of which will not return to normal but will heal over time, and with good examination techniques, sometimes these can be seen months or years later. Very often the edges -- if you were to transect the hymen, just make a slice through it, and you would have pointed edges initially of where the cut was, it was cut like this (indicating) and cut apart, over time those edges heal and round about so they look much more like smooth curves. What you can sometimes see,

however, is the absence of hymen in that area, if you are able to do a very good examination. There are cases, however, and this is once again standard and been proven in many studies, that there are children followed from the emergency room who have had clear and simple hymenal transsections who had -- basically, they are unfindable later on. This is months later.

Q. Let's assume that there were five men who penetrated, but the penetration was only slight of the vagina, or --

A. The hymen.

Q. -- of vaginal intercourse. Would there be more of a likelihood of finding injury because there were five as opposed to just one person who had slight penetration?

A. Well, if the penetration is slight, then it once again depends upon the hymen type and it depends on the time since this happened of healing. You know, most of the kids that we see have not been abused one time. The majority of children in the studies that we see have been -- it's been a multiple event problem, not just one time. So these are the kids that we're talking about in the studies, not children who had a one-time encounter, and those are the kids that we see.

Q. And the kids that you see that had multiple abuse, it's not uncommon not to find injury?

A. Exactly.

Q. Based on your training, your experience, articles that you have read, would you expect that a five-year-old girl would be

able to describe the actual penetration in a reliable way?
A. Based on literature and my experience, children who are five do not understand the concept necessarily of penetration nor in or out. They do not have -- and actually, most of us in this field don't think that kids much under ten, eleven, or twelve understand the concept of what is in or out of their body. They understand pain, they understand pressure, and if shown something, they might say, I think that's what happened. Most of those children don't even know there's another opening down there. They know they pee in that place and they poop in the other place, but they don't necessarily even know there's a place for anything to go there. So the idea that they would understand whether something was in or out -- I mean, most of us who examine kids don't ask, you know, did it go inside, because it doesn't correlate with what you find. And their findings plus their understanding of it is very -- no one believes that most children understand that.
Q. So if the child said it goes in all the way, would that be a reliable factor to determine whether or not there was full penetration?
A. No, I wouldn't rely on that.
Q. What if a four or five-year-old boy who was watching a man have intercourse, vaginal intercourse with a little girl, and the little boy said it goes in all the way, would you rely on that?

A. I think that a little boy who was watching that would not necessarily have the anatomic understanding of what was happening with the little girl unless he himself had had -- you know, possibly if he, himself, had had something go into him, but it's a different part of the anatomy. And I don't think that children, even in visualizing adult sexual activity, unless it is incredibly graphic and shown immediately to the child, understand what is going where. And that's -- that's my feeling of how they understand things.

Q. And that feeling is based on your experience?

A. My experience and my training and the literature.

Q. If you could refer again to Exhibit No. 1. On page 2, and the term "hymen intact." Would that be an appropriate term for this type of a report?

A. No. Not in my judgment.

Q. Why not?

A. Well, first of all, it does not give any information about what kind of a hymen the child had, which is extremely important. It doesn't give any information about any of the other anatomical structures in the area. It doesn't tell me about any of the other structures that can be injured with child sexual abuse. It doesn't say what "intact" means. It doesn't tell me where the tissue was or where it wasn't. There's not enough description to tell me what that means, and I've had kids referred to me who have, quote, intact hymens and they have

either very abnormal examinations or they have what we call labial fuse, which is where the labia majora, the lips that cover the hymen and all those internal structures are fussed together, where you can't even open them to see where the hymen is. So "hymen intact" means to me very little, and we try to discourage that use in this day and age.

THE COURT: Excuse me. Wouldn't you take that to mean in this report that the examiner looked and didn't notice anything on gross examination?

THE WITNESS: Right. I would assume that's what she meant. But I think that my experience has been that with this small amount of information, there was nothing obvious, but I'm not sure what was seen. And my experience has been that that one word --

THE COURT: In other words, she didn't see anything, but it doesn't mean there wasn't anything there to see?

THE WITNESS: Right. You're right.

Q. (By Mr. Samson) Doctor, could it also mean that she did not actually see the hymen?

A. It can, yes.

Q. Under the conditions of this exam where it was a rushed exam, the child was cowering on the mother's lap and screaming because of the tenseness of the muscles and the position of the examination, it's possible the doctor was thinking she was looking at the hymen and she wasn't?

MR. MAIR: Your Honor, I object to the form of this question.

THE COURT: Sustained.

Q. (By Mr. Samson) Doctor, I would like you to assume -- or actually -- I would like you to assume that this exam was extremely rushed, according to the doctor who performed it. I would like you to assume that the exam lasted approximately 15 to 30 minutes. I would like you to assume that the child was examined in the mother's lap when the child was cowering and screaming. And I would like you to assume that the physician performing this examination was inexperienced, had done approximately 15 to 20 type exams during her residency, and she was still a resident.

MR. MAIR: Your Honor, I object to the hypothetical as being incomplete and not in concord with what I understand the testimony of the physician to have been. My understanding is she testified it was 15 to 30 minutes, her examinations in general. She has no memory of this specific examination; she couldn't tell whether it was 15, 20, 25, or 30. That at times it was rushed because the clinic was crowded. She has no memory of the conditions at that time. That she was at a hospital where these cases were referred and had supervisors available. She has no memory of whether the entire examination took place with the child in the mother's lap or not. And these are not present in this hypothetical. I object.

THE COURT: What are you going to ask the witness?

MR. SAMSON: Your Honor, I'm going to ask whether under those assumptions that I have given, whether it's possible that the doctor did not actually see the hymen when she thought she was looking at it.

MR. MAIR: Asked and answered, Your Honor.

THE COURT: Sustained.

Q. (By Mr. Samson) Dr. Wiester, would the fact that there was no colposcope used in this examination, would that affect the physician's ability to observe injury that may have been there?

A. It can, yes.

Q. Why is that?

A. Certainly using the colposcope, you have access to very good illumination and magnification as well as documentation of what you have seen. One of the studies that was done by one of the people outstanding in this field looked at whether or not using a colposcope actually affected whether or not there were more findings noted, and initially his feeling was -- this is David Muram in Tennessee -- and his feeling was that if you use the colposcope, you may not see more findings than if you don't use the colposcope. But what he found, actually, was that that's true, but you have to be an extremely experienced examiner before you can find the same number of findings. In other words, if you were an extremely experienced examiner, you can find as many findings without the colposcope as you find with

the colposcope. But if you're not an experienced examiner, then the colposcope may help you, but you may not recognize what you are seeing when you see it even with a colposcope. But what happens with a colposcope is that you document what you see if you're not an experienced examiner so that someone who is more experienced may evaluate what you saw.

Q. So could a doctor who's inexperienced look and not see any injury and show that slide from the colposcope to an experienced doctor and that experienced doctor would see something?

A. Yes.

Q. The report on page 2 of Exhibit 1, it also talks about no lacerations, no swelling, and no erythema. Would the fact that this exam took place at least four days, and as many as a few weeks, after the last incident of abuse have an effect on whether or not these injuries would be seen?

A. Certainly. You would not see erythema or swelling that long after, even usually most of those acute findings are gone within 48 hours, at most 72 hours. The lacerations, it's different, however.

Q. Would the fact that there's no colposcopic examination explain why the doctor may not have seen lacerations, assuming there were such there?

A. That's possible, yes.

THE COURT: Do you have to sedate a child to do that kind of an exam?

THE WITNESS: A screaming child?

THE COURT: A five year old.

THE WITNESS: No. We don't sedate five year olds generally. As a matter of fact, we have never sedated a five year old. Usually the only children that we need to sedate are two and three. But a five year old is a larger weight for sedation, and so you can -- there are rapid acting sedatives you can use in hospital settings that were not available at this time. But screaming children, even in this day and age, are not submitted to exams now.

THE COURT: When you use a colposcope on a child this age, do you get them to cooperate?

THE WITNESS: I sure do. A hundred percent.

Q. (By Mr. Samson) In your experience, have you ever seen exams that have been performed by an inexperienced physician who were subsequently performed by an experienced physician, in the area of child sexual reviews, where the first physician did not see any signs of penetration or injury and yet the second, more experienced physician did see such things?

A. Yes.

Q. In your opinion, Doctor, based on all your experience and training and the articles you have reviewed, would Exhibit No. 1 disprove penetration?

A. No.

Q. Referring you to Exhibit No. 2. You have also looked at

this exam fully before?
A. Yes.
Q. In your experience, in your training and your education, would this report disprove penetration?
A. No.
MR. SAMSON: Thank you, Doctor. That's all I have.

CROSS-EXAMINATION

BY MR. MAIR:
Q. Good afternoon.
A. Hi.
MR. MAIR: Your Honor, I would seek to publish Dr. Wiester's deposition at this time.
THE COURT: It may be ordered opened and published.
Q. (By Mr. Mair) Doctor, as I understand it, you were first consulted by the assistant attorney general, Mr. Samson, concerning your opinions in this case and he provided you with certain materials that you reviewed.
A. Right.
Q. And then you drafted an affidavit, or he did, and you signed it, concerning your opinions.
A. Right.
Q. Is that correct?
A. Right.
Q. And then you were deposed by my partner on July 24th, 1996?
A. Yes.